UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 07-60399-CIV-ALTONAGA/TURNOFF

SPIRIT AIRLINES, INC.,

Plaintiff,

v.

24/7 REAL MEDIA, INC., et al.,

Defendants.

_____________________________________/

DEFENDANT PRICELINE.COM, LLC'S UNOPPOSED MOTION FOR ENLARGEMENT OF TIME TO RESPOND TO COMPLAINT FOR INTERPLEADER AND PREPARE/FILE JOINT SCHEDULING REPORT AND CERTIFICATE OF INTERESTED PARTIES

Defendant Priceline.com, LLC ("Priceline") hereby moves this Court for an enlargement of time to Respond to Plaintiff Spirit Airlines, Inc.'s ("Spirit") Complaint for Interpleader and to prepare and file a joint scheduling report and certificate of interested parties until ten days after the Court has ruled on the issues of subject matter jurisdiction and venue as detailed in its May 3, 2007 Order [DE-40] and Plaintiff's motion for transfer of venue [DE- 48].

In support of this motion, Priceline states as follows:

1. Spirit's Complaint for Interpleader alleges that this Court has subject matter jurisdiction under both the Federal Interpleader Act ("FIA"), 28 U.S.C. § 1335, and Federal Rule of Civil Procedure 22 in concert with the diversity statute, *id.* § 1332.

2. On April 24, 2007, Priceline moved for a brief enlargement of time, through and including May 25, 2007, to respond to the Complaint [DE-11]. Later that same day, the Court granted the motion and issued an Order Requiring Joint Scheduling Report [DE-12 and 13].

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3. On May 1, 2007, the Court ordered Spirit to submit a "Motion for Entry of Clerk's Default" no later than May 11, 2007, with respect to Defendants TravelZoo, Inc., Travel Marketing Group, Inc., Echo Target, Inc., Real media, Inc., Cheapflights (USA), Inc., Hotwire, Inc., and Tripadvisor LLC, Inc. ("Order on Default Procedure") [DE-39]. "To date," the Court explained, those Defendants "have failed to answer or otherwise respond" to the Complaint for Interpleader.

4. On May 3, 2007, the Court, *sua sponte*, issued an Order addressing the issues of subject matter jurisdiction and venue in this Court [DE-40]. The Court determined that complete diversity is lacking in this matter and, therefore, Spirit may not proceed in this Court pursuant to Federal Rule of Civil Procedure 22. *Id. a*t 2.

5. Because only statutory interpleader under the FIA is potentially available to Spirit, the Court explained that "deposit of the amount in controversy with the Court is a requirement for the exercise of jurisdiction." *Id.* (citing 28 U.S.C. § 1335(a)(2)). As the Court observed, Defendant Carrollton Bank has asserted that it is entitled to $660,697.73 from Spirit. Spirit, by contract, claims that the amount in controversy - - that is, the amount Spirit alleges it owes all defendants - - is just $458,186.26. Complaint [DE-1] ¶ 59. Clearly, the amount in controversy was disputed in this case.

6. The Court further observed that the venue statute for statutory interpleader actions, 28 U.S.C. § 1397, provides that venue is proper in judicial districts where one or more of the claimants reside. Therefore, the Court explained, "[i]t appears . . . that venue may not be proper in this Court." [DE-40] ¶ 3.

7. Accordingly, the Court ordered Spirit to submit a written filing addressing two separate issues: (1) whether Spirit is, in fact, obligated to make a deposit in the amount of

$660,697.73 with the Court Registry, and whether Spirit is prepared to make such a deposit; and (2) whether venue is proper in this Court. *Id.*

8. The Court ordered Spirit to brief the foregoing issues by May 17, 2007. *Id.*

9. In light of the Court's concerns over subject-matter jurisdiction and venue, the Court set aside the Order on Default Procedure "pending a determination of whether this case should proceed in this Court." *Id.*

10. On May 7, 2007, Defendants Advertising.com, Inc. ("Advertising") and America Online, Inc. d/b/a AOL ("AOL") filed a motion for an indefinite enlargement of time to respond to the Complaint until after the Court resolved the subject matter jurisdiction and venue issues [DE-41]. On May 9, 2006, the Court granted Defendants Advertising and AOL's motion and ordered them to respond to the Complaint within ten days after the Court issues its decision on the subject matter jurisdiction and venue issues [DE-42].

11. On May 17, 2007, Plaintiff filed its Response to the Court's May 3, 2007 Order concerning the amount in controversy [DE-47]. In addition, Plaintiff filed a motion and supporting memorandum of law to transfer the venue of this action to the U.S. District Court for the District of Delaware [DE-48 and 49].

12. For the same reasons the Court set aside its Order on Default Procedure and granted Advertising and AOL's motion for an indefinite enlargement, it should extend the deadline for Priceline to respond to the Complaint and to prepare/file a joint scheduling report and certificate of interested parties. The Court has raised serious concerns as to whether jurisdiction and venue are proper in this Court, and has ordered Spirit to promptly address those concerns through written submissions. Moreover, the Plaintiff is attempting to transfer the venue

of this action to another court. Accordingly, in the event this Court determines that jurisdiction is lacking or that venue is improper, this case will likely be dismissed or transferred.

13. Priceline therefore seeks an enlargement of time to respond to the Complaint for Interpleader and to prepare/file a joint scheduling report and certificate of interested parties until ten days after the Court has ruled on the issues of subject matter jurisdiction and venue. Such an enlargement will serve the interests of judicial economy, in that it will potentially obviate the need for Priceline to respond to the Complaint for Interpleader, and potentially relieve the Court of the burden of addressing any related motions.

14. This motion is brought in good faith and not for the purpose of delay, and no party will be harmed by granting the relief requested herein.

15. Plaintiff's counsel has been contacted concerning this request, and has agreed to the granting of the enlargement of time.

16. Pursuant to S.D. Fla. Local Rule 7.1(A)(2), attached hereto as Exhibit "1" is a proposed Order.

WHEREFORE, Defendant Priceline.com, LLC respectfully moves for an enlargement of time to respond to the Complaint and to prepare/file a joint scheduling report and certificate of interested parties until ten days after the Court has ruled on the issues of subject matter jurisdiction and venue, together with such other and further relief as the Court deems just, proper and equitable.

LOCAL RULE 7.1(A)(3) CERTIFICATION

Pursuant to S.D. Fla. Local Rule 7.1(A)(3), counsel for Priceline certify that they have conferred with counsel for Plaintiff Spirit Airlines, Inc. with respect to the relief requested, and states that counsel for Plaintiff agrees to the granting of the enlargement of time.

Dated: May 21, 2007
Miami, Florida.

Respectfully, submitted,

By: *s/ Steven M. Ebner*

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on May 21, 2007, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will send a notice of electronic filing to all counsel of record identified on the attached Service List.

s/ Steven M. Ebner
Of Counsel

SERVICE LIST

Spirit Airlines, Inc. v. 24/7 Real Media, Inc., et al.
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